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Filing date: **10/25/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176744
Party	Plaintiff DC Comics and Marvel Characters, Inc.
Correspondence Address	Jonathan D. Reichman Kenyon & Kenyon, LLP One Broadway New York, NY 10004 UNITED STATES
Submission	Other Motions/Papers
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Date	10/25/2007
Attachments	2007-10-25_DC-Mar_Drucker_ISO_Summary_Judgment_Motion.pdf ( 19 pages ) (1162937 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Michael Craig Silver  
Application Ser. No.: 78/823,155  
Filing Date: 2/24/06  
Mark: SUPER HERO  
Date of Publication in OG: 1/16/07  
DC Comics: DC Comics and Marvel Characters, Inc.

DC COMICS and  
MARVEL CHARACTERS, INC.,

DC Comics,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

**DECLARATION OF MARILYN DRUCKER**

I, Marilyn Drucker, hereby declare as follows:

1. I am currently the Executive Director -- Brand Management for DC Comics ("DC Comics"), which is headquartered at 1700 Broadway, New York, New York.
2. The facts stated herein are based on my personal knowledge.

3. DC Comics owns a vast network of thousands of character properties, including without limitation such internationally-famous characters as SUPERMAN and BATMAN.

4. DC Comics publishes comic books featuring its character properties and trademarks.

5. A substantial part of DC Comics' business originates from licensing its marks and characters for use in connection with a variety of goods and services, including without limitation: apparel and accessories, footwear, domestics and linens, fine arts and collectibles, food and beverages, gifts, novelties and decorations, toys, games, audio equipment, video games, computer products, house-wares, furniture, garden and hardware products, cosmetics, personal care and health care products such as bubble baths, toothbrushes, foam soaps, facial tissues, and bandages, pet products, promotions and entertainment, sporting goods, and stationery and paper goods.

6. DC Comics' merchandise licensing programs are among the largest and most successful in the world, involving hundreds of different licensees, and generating licensing royalties of approximately \$100 million in 2006.

7. Beginning in 1966, DC Comics, jointly with Marvel Characters, Inc. ("Marvel") (including our and Marvel's predecessor-in-interest), have exploited their SUPER HERO and SUPER HEROES trademarks in connection with comic books, toys and masquerade costumes.

8. Typically, DC Comics' merchandise license agreements bundle groups of characters. Such agreements generally include a license to use the trademarks SUPER HERO and SUPER HEROES.

9. DC Comics has a long history of exploiting its other trademarks in connection with International Class 3 goods, including without limitation hand creams and lotions, body creams and lotions, sunscreen preparations, bubble baths, toothbrushes, foam soaps, facial tissues, and bandages. Consumers can find SUPERMAN toothbrushes and bandages at their local drug stores.

10. A true and correct copy of a photograph of a battery powered toothbrush bearing the BATMAN mark is attached as Exhibit A.

11. A true and correct copy of a photograph of a box of facial tissue bearing the SUPERMAN mark is attached as Exhibit B.

12. A true and correct copy of a photograph of a canister of foam soap bearing the SUPERMAN mark is attached as Exhibit C.

13. A true and correct copy of a photograph of a basketball bath set bearing the SUPERMAN mark is attached as Exhibit D.

14. A true and correct copy of a photograph of a bath set bearing the SUPERMAN mark is attached as Exhibit E.

15. A true and correct copy of an Internet page from Drugstore.com showing a toothbrush bearing the SUPERMAN mark is attached as Exhibit F.

16. A true and correct copy of an Internet page from Drugstore.com showing a package of bandages bearing the SUPERMAN mark is attached as Exhibit G.

17. DC Comics' exploitation of its trademarks on personal care products reflects a popular trend in consumer merchandising.

18. Comic books, toy figures, masquerade costumes (especially during the Halloween season), and suntan lotions can all be found at local drug stores, retail supermarket stores, big box stores like Wal Mart and Best Buy, and online.

I declare that the foregoing is true and accurate to the best of my knowledge under penalty of perjury of the laws of the United States.

Dated: October 24 2007

Marilyn Drucker  
Marilyn Drucker

# EXHIBIT A

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit

BATMAN-POWERED

# BATMAN

## TOOTH BRUSH

2 "C" CELL  
BATTERIES  
REQUIRED

(Not Included)



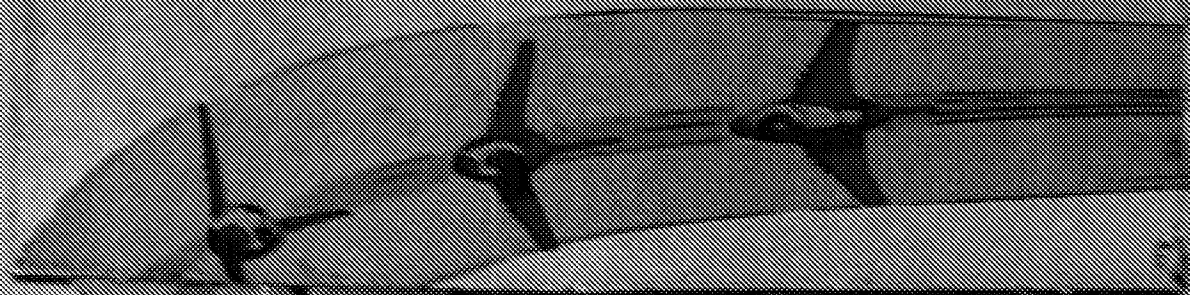
# EXHIBIT B

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit



# SUPERMAN

Facial Tissue



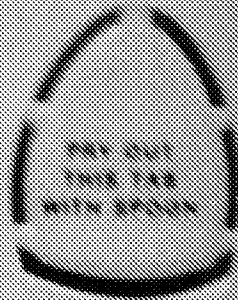
FACIAL TISSUE 75 2-PLY TISSUES • 8.25 x 9.50 IN.

# EXHIBIT C

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit



CAUTION  
DISTRIBUTE CHILDREN  
IN PROPER USE  
KEEP AWAY FROM  
EXCESSIVE HEAT



DO NOT REMOVE HEAD  
UNTIL CAN IS EMPTY

Crazy  
Foam

SUPERFOAM

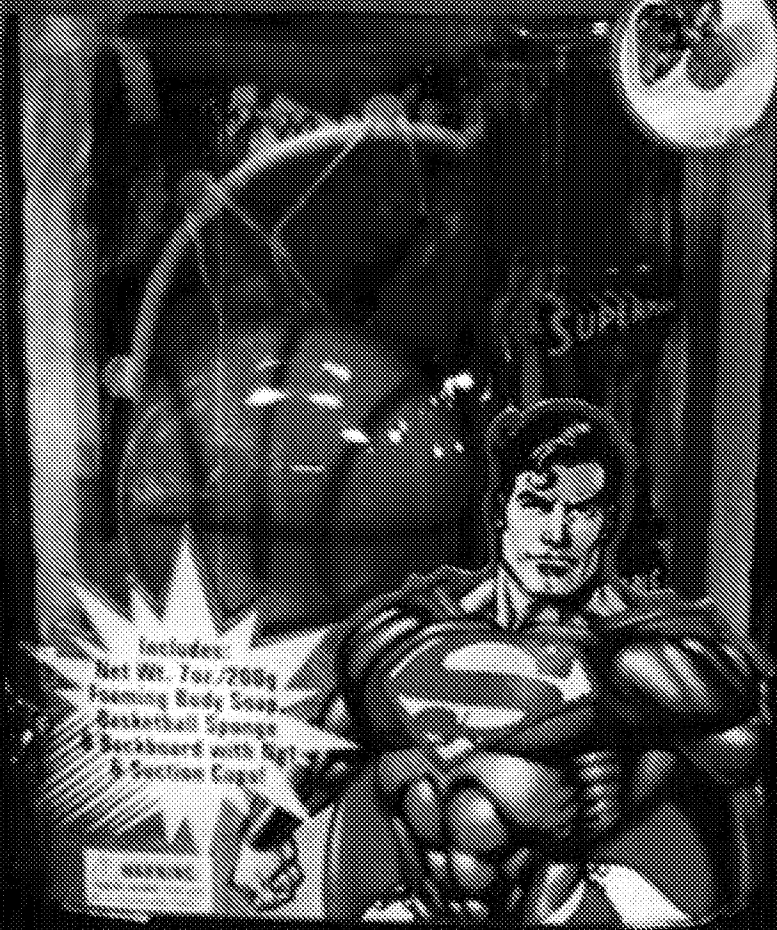
CAUTION

# EXHIBIT D

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit

# SUPERMAN BASKETBALL BATH SET

Makes Every Bath a "Slam Dunk!"



## Includes:

- Net Wt. 7oz/200g
- Foaming Body Soap
- Basketball Sponge
- Backboard with Net & Section Cages!



# EXHIBIT E

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit



**SUPERMAN**

# SPIN N' SCRUB TUB FUN



**WARNING**  
CHOKING HAZARD - Small Parts  
Not for Children Under 3 Years

Includes: 1 EVA Mat with Spinner, 15 x .8g (.02 oz) Bath Fizzles,  
8.8 oz (250ml) Bubble Bath, 1.75 oz (50g) Soap on a Rope and Bath Sponges.



# EXHIBIT F

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit



**free shipping** on any order\* of \$25 or more >  
\*First, nonprescription orders only. Standard shipping.

**drugstore**.com  
the uncommon drugstore

welcome (sign in) | view shopping bag | **0 items** | help  
your account | your list™ | your prescriptions | fast shop

prescriptions	health	personal care	hair	skin care	sun care	beauty & jewelry	men's	vitamins	OTC	diet & fitness	food	SALE
SEARCH: <input type="text"/>		natural	household & pets	photo & video	baby	sexual well-being	contact lenses	BEAUTY.COM.				

**up to 40% off** sun care and summer essentials >

your shopping bag  
no items in bag

view details | **Checkout**

browse: [personal care](#) | [oral care](#) | [toothbrushes](#) | [all toothbrushes](#) | [Colgate store](#)

## Colgate Children's Toothbrush, Extra Soft, Ages 5+, Superman (Colors and Characters May Vary) 1 ea

### Product Info

[package details](#)  
[see accessories](#)

### Talk about this item:

[e-mail a friend](#)  
[write a review](#)

### Related Products:

[children's](#)  
[interdental](#)  
[medium / compact head](#)  
[medium / full head](#)  
[sanitizers](#)  
[More in personal care](#)

Visit our [Colgate Store](#)

See what other customers of this item also shopped for and bought



[see larger photo](#)

our price: **\$2.79**

quantity:  **Add to bag**  
or  
[Save to your list™](#)

availability: in stock

[Everyday Free Shipping](#)

### Package Details

#### Colors and Characters May Vary

This brush is specially designed for children older than 5 years of age who have a combination of baby and adult teeth.

1. Center color dot helps you measure the recommended amount of toothpaste.
2. Unique soft tongue cleaner on back of the head to encourage good oral care habits early on
3. Small oval head with soft material protects children's gums.
4. Multi-height bristles to thoroughly clean teeth
5. Comfortable thumb rest and non-slip cushioned handle for better control.

Dentists & Hygienists recommend replacing your toothbrush every 3 months.

Questions? Comments? 1-800-468-6502

### Warnings:





Children under 4 should not use without adult supervision. Do not chew. For toothbrushing only.

Colgate Palmolive Co.

### Customer Reviews

There are currently no reviews for this item. [Be the first one to write a review!](#)

**Get Colgate Children's Toothbrush, Extra Soft, Ages 5+, Superman (Colors and Characters May Vary) with accessories:**

	Product Name:	Quantity:	Price:	Select:
	<b>Colgate Children's</b> Toothbrush, Extra Soft, Ages 5+, Superman (Colors and Characters May Vary) - 1 ea in stock	<input type="text" value="1"/>	\$2.79	<input checked="" type="checkbox"/>
	<b>Crest Glide</b> Dental Floss, Flip-Top Vial - 109.4 yd in stock	<input type="text" value="1"/>	\$6.92 save10%	<input type="checkbox"/>
	<b>Listerine</b> PocketPaks Oral Care Strips, Cool Mint - 72 strips in stock	<input type="text" value="1"/>	\$3.19 save20%	<input type="checkbox"/>
	<b>VIOlight</b> Toothbrush Sanitizer & Storage System - 1 ea in stock	<input type="text" value="1"/>	\$44.99 save10%	<input type="checkbox"/>
				<a href="#">Add selected to bag</a>

**our policies**

Questions? Please  
visit our [site help](#)  
[pages](#) for information  
about our site and our  
policies.  
[about our prices](#)

**Can't remember where you saw something? Try these recently viewed areas:**

**Recently viewed products:**

**Curad - Children's**

[Assorted Kid Size Bandages,](#)  
[Superman](#) - 20 ea



suggested:\$2.99

our price:\$2.79

save 7%

**Band-Aid - Children's**

[Adhesive Bandages, Assorted](#)  
[Sizes, Care Bears, Care Bear](#)  
- 20 ea



our price:\$2.99

**Band-Aid**

[Adhesive Bandages,](#)  
[Strawberry Shortcake Variety](#)  
Pack 20s - 20 ea



suggested:\$3.99

our price:\$3.49

save 13%

**Recent searches:**

[superman](#)  
[batman](#)  
[kids bandaid](#)  
[kids](#)  
[lotion, lotion](#)

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[prescriptions](#) | [health](#) | [personal care](#) | [hair care](#) | [skin care](#) | [sun care](#) | [beauty](#) | [men's grooming](#) | [vitamins](#) | [gnc store](#) | [diet & fitness](#) | [food](#) |  
[top offers](#) | [the natural store](#) | [household & pets](#) | [photo & video](#) | [baby & kids](#) | [sexual well-being](#) | [discount contact lenses from vision direct](#) |  
[beauty.com](#)

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# EXHIBIT G

Opposition No. 91/176,744, SUPER HERO  
DC Comics Exhibit

**free shipping** on any order\* of \$25 or more >  
\*First, nonprescription orders only. Standard shipping.

**drugstore.com**  
the uncommon drugstore

welcome (sign in) | view shopping bag | **0 items** | help  
your account | your list™ | your prescriptions | fast shop

prescriptions	<b>health</b>	personal care	hair	skin care	sun care	beauty & jewelry	men's	vitamins	EMC	diet & fitness	food	SALE
SEARCH: <input type="text"/>		natural	household & pets	photo & video	baby	sexual well-being	contact lenses	BEAUTY.COM.				

**up to 40% off** sun care and summer essentials >

your shopping bag  
no items in bag

view details | **Checkout**

browse: **health** | first aid | adult & kid's bandages | kids' bandages | Curad store

## Curad - Children's Assorted Kid Size Bandages, Superman 20 ea

### Product Info

package details

FSA Eligible

suggested: \$2.99

**our price: \$2.79**

save 7%

quantity:

**Add to bag**

or

Save to your list™

availability: in stock

### Talk about this item:

[e-mail a friend](#)

[write a review](#)



Everyday Free Shipping

### Related Products:

[adult bandages](#)

[elastic bandages](#)

More in [health](#)

[see larger photo](#)

Visit our [Curad Store](#)

See what other customers of this item also shopped for and bought

### Package Details

20 Sterile Assorted Sized Bandages for Fingers, Elbows & Knees

6 - 1 1/8 x 2 1/8 inch (30 x 55 mm)

14 - 3/4 x 2 1/8 inch (19 x 55 mm)

### Directions:

Apply bandage to clean, dry skin. Change bandage daily or when pad becomes wet. Sterile unless wrapper is damaged or opened.

### our policies

Questions? Please visit our site help pages for information about our site and our policies.  
[about our prices](#)

### Customer Reviews

There are currently no reviews for this item. [Be the first one to write a review!](#)

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**Can't remember where you saw something? Try these recently viewed areas:**

**Recently viewed products:**

**Band-Aid - Children's**  
[Adhesive Bandages, Assorted Sizes, Care Bears, Care Bear](#)

**Band-Aid**  
[Adhesive Bandages, Strawberry Shortcake Variety](#)

**Band-Aid - Children's**  
[Adhesive Bandages, Assorted Sizes, Barbie - 25 ea](#)